The Order of the Court is stated below:
Dated: July 19, 2019 04:26:27 PM
/s/ MICHAEL S. EDWARDS
District Court Judge

D. MICHAEL NIELSEN (#3668)
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IN THE SECOND JUDICIAL DISTRICT COURT

DAVIS COUNTY, STATE OF UTAH

LAUREN R. MARSH, Petitioner, vs. KIRK RUSSEL MARSH, Respondent.	**FINDINGS & ORDER GRANTING PETITIONER'S OBJECTION TO COMMISSIONER'S RECOMMENDATION DENYING BIFURCATION** Civil No. 184701031 Judge Michael Edwards Commissioner Christina Wilson

This matter came on for hearing on May 14, 2019 before Honorable Michael Edwards, Second District Court Judge, on Petitioner's Objection to the Recommendations of Commissioner Wilson denying Petitioner's Motion for Bifurcation of this matter.

Petitioner was present and represented by counsel, Douglas D. Adair. Respondent was not present, but was represented by counsel D. Michael Nielsen. Respondent's father was present telephonically.

The Court having reviewed the papers and pleadings on file, hearing the

arguments and proffers of counsel and being fully advised in the premises, now makes and enters the following:

FINDINGS & ORDER

1. The Court thanks counsel for the professional and thorough efforts in this case.

2. The Court has considered this matter carefully. The Court notes that children are of paramount importance in any consideration of this nature.

3. Utah Rules of Civil Procedure 108(f) requires the Court to make an independent decision "based on the evidence whether by proffer or testimony or exhibit, etc." The Court is called upon to view the circumstances of the parties and the children and make a decision as to what is best.

4. The standard for bifurcation is set forth in URCP Rule 42(b):

> The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross claims, counterclaims, third party claims, or issues.

Accordingly, the key words are: "in furtherance of convenience or to avoid prejudice."

5. In July of 2017, Respondent was arrested for commission of Federal crimes and was convicted of those crimes and incarcerated in January, 2018. Sometime in the latter part of 2017, Petitioner relocated to be with her family here in Utah, after being alone on the East coast and Respondent remained incarcerated in Cumberland, Maryland.

6. In June, 2018, Petitioner filed a Petition for Divorce, and as counsel mentioned, hearing on the Motion to Bifurcate has been held a couple of times.

The first time was in November, 2018 and that was denied. The Motion was renewed in 2019 and was heard in March by the Commissioner who again denied the Motion. Another fact the Court thinks is pertinent, and perhaps most important for the Court's decision, is that given the prior Temporary Orders that were entered and the fact that the Court has a trial set within the next 90 days, the Court finds that the decision on the Motion to Bifurcate does not implicate child-related issues directly. In other words, temporary orders considering the children have been entered by the Court and final orders will be entered by the Court after the trial. Therefore, the Motion to Bifurcate is a separate issue from the issue of what is in the children's best interest.

7. The Court finds that it is reasonable to overturn the Commissioner's recommendation and grant Petitioner a bifurcated divorce, based on the following Findings:

a. By his actions being incarcerated in a Federal Prison, the Respondent has placed himself, the Petitioner and their children in a situation that is inherently stressful for all of them. Thus while Respondent would like to have the entry of the decree of divorce delayed until the trial of the matter, the Court finds that Respondent's opinion in the matter is somewhat reduced by virtue of the fact that he is where he is by virtue of his own choices and his criminal actions.

b. Petitioner has provided credible evidence that she is being prevented in moving forward with her life with dating and other things related to dating that she

cannot carry forward with because of her moral values and religious beliefs because she is still married. Thus, it would be a convenience to her, and would avoid and reduce prejudice to her in this divorce matter if the Court were to grant the Motion to Bifurcate the divorce.

c. Respondent wants to delay entry of the decree because of whatever reasons he might have. Perhaps he hopes that the divorce won't happen, or whatever the case may be. Again, his opinion is reduced in importance.

d. The Court finds Utah case law helpful in this case. In Parker v. Parker, the court states: "the severance of the divorce and economic claims ensures that the parties' personal lives will not be held hostage to economic disputes." 996 P.2d 565 (Utah Ct. App. 2000).

e. The Court concludes that the Petitioner's personal life is being held hostage by the pendency of the divorce, which involves issues with custody, parent-time, and financial decisions related to those issues.

f. Based upon the foregoing, the Court concludes that this is a close decision and that it is not being critical of the Commissioner. However, based upon the Court's best judgment, and based upon the facts, it is in the furtherance of the convenience of Petitioner, and to avoid further prejudice to her where this divorce matter has been pending for 11 months or so, and the parties have been separated coming up on two years because of the Respondent's arrest, the Court finds that in the interest of justice the Motion to Bifurcate should be granted and Petitioner should be granted an

immediate bifurcated divorce.

g. As an additional finding of fact in support of this ruling, the Court finds that Petitioner has received recent mailings about lawsuits against Respondent. This has occurred since her Affidavit was submitted and the Court considered that new evidence by stipulation. The Court finds that these notices increase Petitioner's stress and anxiousness in this matter and is another reason to support the Court's decision to grant the bifurcation and entry of a Decree of Divorce.

8. All prior temporary orders as they relate to the children will continue in full force and effect.

9. Today's decision will have no bearing on the pending issue regarding Respondent's summer parent-time. Any issues not already resolved are still open for trial – essentially, all other issues other than the entry of the Decree of Divorce.

10. Trial is scheduled in this matter for Thursday, August 15th and Friday, August 16th. Pursuant to Mr. Nielsen's request, proceedings will begin at 8:00 a.m. so that Respondent will be able to participate for the majority of the trial, in spite of the time difference.

Electronically DATED, SIGNED AND ENTERED BY THE COURT,

as shown at the top of this Order.

Approved as to form:

/s/ Douglas D. Adair

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Signed by D. Michael Nielsen
with permission of
Douglas D. Adair
Attorney for Petitioner